United Nations CCPR/C/SR.2256

International Covenant on Civil and Political Rights

Distr.: General
16 May 2005

Original: English

Human Rights Committee
Eighty-third session

Summary record of the 2256th meeting
Held at Headquarters, New York, on Tuesday, 1 March 2005, at 10 a.m.

Chairperson: Ms. Chanet

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05-27055 (E)

The meeting was called to order at 10.15 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Second periodic report of Kenya (*continued*) (CCPR/C/KEN/2004/2; CCPR/C/82/L/KEN)

1. *At the invitation of the Chairperson, the delegation of Kenya took places at the Committee table.*

2. **The Chairperson** invited Committee members to ask any additional questions they might have concerning questions 1 to 18 on the list of issues.

3. **Mr. Bhagwati** said that he was concerned that Covenant rights were spread throughout various constitutional and domestic legal provisions. They were not, as such, enforceable in the domestic courts. Currently, their status was no higher than that of domestic law, which was subject to the vagaries of the legislature. They should be embodied in the Constitution, which was more difficult to amend than domestic legislation. He hoped that the new Constitution would contain a chapter devoted exclusively to Covenant rights.

4. He wanted to know whether there was a training programme for judges and, if so, whether any part of it was dedicated to the Covenant. Even if the Covenant was not part of domestic jurisprudence, the rights that it conferred could be relied on for the interpretation of domestic law and that law could be construed as giving effect to Covenant rights, in accordance with the Bangalore Principles of Judicial Conduct. Accordingly judges needed training in the art and skill of incorporating human rights through judicial interpretation.

5. He wanted to know whether the Kenya National Human Rights Commission was a statutory body, what its functions were, how its officials were appointed and whether they had security of tenure. He wondered whether its recommendations were binding. He asked whether the Commission had made efforts to change cultural attitudes and build a democratic structure of human rights. He sought information on measures to improve women's representation in Parliament, including reverse discrimination.

6. Certain paragraphs of the report required clarification. Paragraph 33 appeared to imply that the parents of an intestate person were given priority over the spouse and children in matters of inheritance. If so, the spouse and children would get nothing and have to rely on in-laws. He wanted to know whether the property rights of women described in paragraph 37 applied unconditionally.

7. Limited access to contraception led to unwanted pregnancies, which often resulted in illegal abortions that endangered the mother's life. He wanted to know whether the Government contemplated legalizing abortion in certain circumstances, or taking any other steps to prevent such situations. Female genital mutilation was widely practised in rural areas, and he wanted to know whether any law prohibited it. Furthermore, men and women needed education to encourage them to abandon the practice.

8. **Mr. Johnson López** said that he would appreciate additional information regarding the constitutional or legal provisions underpinning the decision to remove more than 60 judges from office and the legal formalities for replacing members of the bench. He endorsed Mr. Bhagwati's questions with regard to the Kenya Human Rights Commission.

9. **Mr. O'Flaherty** asked how active the Government of Kenya was in protecting refugees under article 2 of the Covenant, including by assisting those who wanted to return to southern Sudan and other locations. He sought more information egarding the status of a refugee bill currently before Parliament and the degree to which it focused on Covenant rights. He enquired about the status of the proposal to establish a Truth and Reconciliation Commission, referred to in paragraph 44, and how many of the Covenant's principles, such as reparations for human rights abuses, had been incorporated in the proposal.

10. **Ms. Wedgwood** asked how many of the nine prosecutions for the shooting of police officers had resulted in conviction and how many of those responsible for deaths in custody had been prosecuted and/or convicted. While she held the Truth and Reconciliation Commission to be a possibility, it was perhaps premature: there could be no reconciliation without prosecution. She wanted to know whether the Commission would have the power to order removal of police officials for deadly use of force. She understood that insufficient food was a problem in prisons,

particularly in cases of pre-trial detention, and requested more information on prisoners' caloric intake. More information would be appreciated about measures to protect victims of domestic violence, and the HIV/AIDS statistics contained in paragraph 63 of the report should be clarified. She asked for a comparison of Kenya's and Uganda's methods of dealing with the epidemic.

11. **The Chairperson** invited the delegation to reply to the additional questions.

12. **Mr. Wako** (Kenya) said that the Anti-Corruption Commission was a totally independent body constituted to receive complaints from the public, the National Assembly and the Attorney General, to investigate corruption and to conduct promotional activities to counter corruption. Its appointment procedures were completely transparent: posts must be advertised and candidates were selected by an advisory board that had no Government participation. The director and his deputy had security of tenure. Following investigations that provided sufficient evidence, cases were submitted to the Attorney General for prosecution. Proceedings were transparent. His office was committed to eradicating corruption, and the system in place had shown significant results.

13. The conflicting dates surrounding the establishment of the Kenya National Human Rights Commission were both correct. The confusion arose from the enactment in 2002, shortly before a general election, of the bill establishing the Commission. The delay caused by the electoral process had prevented the law from becoming operational until 2003. The appointment procedures for the Human Rights and Anti-Corruption Commissions were similar.

14. He accepted Mr. Bhagwati's position on the status of the Covenant within law: his Government fully subscribed to the Bangalore Principles. While national jurisprudence had hitherto scarcely referred to the Covenant, the situation was set to change in the future. Once Kenya had ratified the Optional Protocol, people would become more aware of the Covenant. At that point the judicial interpretation of the laws already existing within the Constitution and domestic legislation would place the Covenant within the national jurisprudence.

15. Kenya was correct in not enacting domestic legislation to provide for Covenant rights. Kenya had a written Constitution. Accordingly, if it passed such legislation, the rights would be second class, subject to interpretation under the Constitution. Human rights were not a controversial issue under the proposed Constitution. One had only to look at the Bill of Rights to see that the scope of rights thereunder was even greater than under the Covenant. Should the constitutional process come to nought, the Government would then be forced to amend its current Constitution to conform to the provisions of the Covenant.

16. The Government of Kenya did not discriminate against women. It was moving ahead, including through affirmative action, to guarantee equality in political, economic and social rights for women. That was the purpose of the Commission on Gender Development.

17. **Ms. Wambua** (Kenya) said that the Government had always acknowledged the vital role of women in national development. Indeed, the Women's Bureau established in 1976 within the Department of Social Services to ensure the integration of women in the development process had been upgraded since December 2004 into the Department of Gender. Providing some 2003 figures on the presence of women in various aspects of Kenyan life, she noted that in the agricultural sector, out of a total workforce of 316,000, women accounted for 78,500. In the manufacturing sector, women made up 141,100 of the total of 241,000 workers, with men accounting for 199, 600. In public administration, there were 55,600 women as compared to 94,200 men. Kenya now had the largest number of women members of Parliament ever, 18 out of a total of 220. In primary education, girls accounted for 49.9 per cent of total enrolment, with boys making up 50.1 per cent. In secondary education, the figures for female and male students were 48.2 and 51.8 per cent, respectively. Women accounted for 45.5 per cent of the 8,021 students in private universities; the corresponding figure for public universities, out of a total of 52,408, was 30.8 per cent.

18. **Mr. Kiai** (Kenya) said that the Kenya Human Rights Commission had a broad mandate which incorporated political, civil, economic, cultural and social rights. The Commission set its own agenda; its strategic plan had been published in 2003. There were basically three major impediments in the area of culture — traditional culture, societal culture and governmental culture. In the area of traditional culture, the Commission was working with traditional institutions to push for changes with regard to women's

property and inheritance rights. Indeed, despite the existing law, Kenyan women, particularly rural women, could not inherit from their parents and husbands. The HIV/AIDS pandemic had compounded the situation, increasing poverty among women. Societal culture, which had accepted over 40 years of autocracy and oppression, was beginning to change. The Commission was also trying to empower people to challenge their leadership and push for accountability at all levels of Government. It was also actively working on changing governmental culture from one that stripped people of their rights and property and harassed them, to one of service to the people.

19. Unfortunately, the Commission lacked adequate capacity and funding. Furthermore, because the Commission was a new institution that was supposed to serve as a Government watchdog, it often suffered from a lack of cooperation from State entities, particularly the police. It did, however, enjoy full cooperation from the Attorney-General's office. Financial independence was crucial. Currently, the Commission was valiantly resisting efforts to make it a Government department.

20. **Ms. Angote** (Kenya) said that the aim of the governance, justice, law and order sector reform programme was to reform and strengthen sector institutions for efficient, accountable and transparent administration of justice. It involved four Government ministries and over 32 departments. The aim was to move from narrow institutional thinking towards a broader, implementation-oriented approach. Under the programme, entry-level magistrates were trained in sentencing procedures prior to being sent to various courts throughout the country so as to make them aware of the consequences of their rulings on the increase in prison congestion. Police officers and prison wardens were trained in the promotion and protection of human rights as they carried out their duties, including the potential impact of arrests, such as the overcrowding of prisons.

21. **Mr. Wako** (Kenya), referring to the declaration of a state of emergency, said that the Committee should consider Kenya's Constitution as a whole. Article 83 of the Constitution, entitled "Derogation from fundamental rights and freedoms", listed the rights that could be derogated from in a state of emergency. All the other rights could not be derogated from, consistent with the provisions of the Covenant. The special sections of the Constitution which had been enacted to deal with a war of secession in Kenya's north-eastern province at independence together with the acts of Parliament enacted pursuant to those sections had been repealed. Any declaration of a state of emergency must be subject to the approval of Parliament.

22. On the distinction between cases of robbery with violence and ordinary murder cases, both of which could result in capital punishment, he noted that ordinary murder cases were heard by the High Court of Kenya. Under the current system, any accused who could not afford a lawyer were provided with an advocate to represent them, whereas in cases of robbery with violence, which were heard in magistrate's courts, the accused did not enjoy such a procedural safeguard. Reforms were under way to provide procedural safeguards in all murder and capital punishment cases.

23. The Government had never given the police "shoot-to-kill" orders. Any use of firearms by the police must be in accordance with the law and with the standards laid down under the United Nations Code of Conduct for Law Enforcement Officials. Human rights training programmes were under way for police officers. The police department had even allowed civil society groups, including women's rights advocates, to go to their training camps to conduct human rights training. Women's desks had been established at some police stations to receive reports and complaints on issues such as domestic violence and rape. The ultimate goal was to have such desks at every police station throughout the country.

24. He could not provide the current figure for the number of prisoners on death row but the Government was very aware that such prolonged confinement could be cruel, degrading and unusual punishment. Many death sentences had been commuted to life imprisonment and some death row inmates who had served more than 20 years had even been released. As of 2002, over 19 police officers had been arraigned in court for human rights violations; a number of those cases had resulted in convictions, while INTERPOL was trying to locate the others at large. There was a very clear chain of command within the police force. All police officers were answerable to and under the direction of the Commissioner of Police. That was why in carrying out law reforms the main focus was on the duties of the Commissioner of Police in matters relating to human rights. He was not aware of any torture in the armed forces.

25. The former Government had established the Akiwumi Commission to look into the land clashes. Apart from a number of recommendations for follow-up action, that Commission's report had concluded, inter alia, that most of the land clashes were due to pressure on land, specifically competing river, water and land resource use. The long-term solution lay in how water resources were allocated to all the communities. A task force on the creation of a truth, justice and reconciliation commission had submitted its report to the Government.

26. Abortion was currently prohibited, except where the mother's life was at stake when so certified by a doctor. Some groups were lobbying to change the law so as to make access to abortion easier, and others, in particular religious groups, wanted the restrictions tightened, seeking essentially to abolish abortion in all circumstances.

27. Kenya had no anti-terrorism law as yet, although a draft bill was being reviewed by international and national non-governmental human rights organizations in order to ensure proper balance between the need to deal with the threat of terrorism and the need to protect human rights. Kenya wished to avoid the danger of giving the executive too much judicial power. He hoped the bill would be adopted by the end of the year.

28. The administrative form in prisoners' dossiers that specified and justified the form and duration of their detention was being revised in order to provide more detail and be more readily available. The law specified the maximum sentences for crimes, and courts had discretion in sentencing depending on the circumstances of the case, although that discretion was itself subject to legal bounds. The security of judges had been well covered in his delegation's written answer to question 18 on the list of issues. As there had been many allegations of corruption in the judiciary, the Chief Justice had appointed a committee to hear complaints, investigate and make recommendations, and a tribunal had been established. Unexpectedly, more than 50 per cent of the judges of the High Court and Court of Appeal had resigned rather than submit to investigation, so there were numerous judicial posts that needed to be filled.

29. The figures in the report regarding HIV/AIDS were, unfortunately, accurate. A national AIDS control committee had been formed to sensitize people to the risks of certain behaviours. The high cost of medication aggravated the problem. Domestic violence was the subject of a bill under review by the Government, along with other legislation regarding harmful traditional practices, such as female genital mutilation, imposed on girls under 18.

30. The Refugees Bill had been prepared in consultation with the Office of the High Commissioner for Refugees in order to ensure that the concerns raised in international humanitarian law were met.

31. **Sir Nigel Rodley** asked how Kenya envisaged incorporating the provisions of the Covenant into its Constitution. The existing human rights clauses were not entirely consistent with the Covenant and the draft seen by the Committee did not show improvements in certain key areas, such as the right to counsel in capital cases, without which a person was essentially being held in incommunicado detention. He also sought more information on measures taken by the Government to ensure that national human rights bodies could in fact obtain full cooperation from the police in seeking access to prisons and detainees.

32. **Mr. Lallah** suggested that the Government, in preparing to draft an anti-terrorism law, should take a close look at the materials that could be obtained from the Committee in that connection, including its general comments on articles 2 and 4.

33. **Ms. Wedgwood** asked whether anyone had been convicted of causing the death of a prisoner or if any policemen had been convicted of exercising excessive force, including shooting, leading to death. She also asked about the standard of nutrition provided to detainees.

34. **Mr. Wako** (Kenya) said he welcomed an opportunity to review the general comments of the Committee, in particular as they related to anti-terrorism legislation. He noted that there had been problems in ensuring that human rights bodies had full access to detainees, but they were isolated and not systemic. Ensuring legal assistance to indigent detainees was a goal for which most developing countries lacked adequate resources. He expressed his appreciation of the activities by groups in civil society aimed at filling that gap in government resources. There had been successful prosecutions of prison officers who had murdered prisoners and of police officers who had exercised excessive force leading to death. Some of those accused of such crimes had, however, fled the country and were being sought by

Kenyan authorities through Interpol. A task force on police reform had called for an independent prosecuting body to deal with such crimes.

35. **The Chairperson** invited the delegation of Kenya to address questions 19 to 30 on the list of questions.

36. **Mr. Wako** (Kenya) briefly reviewed the written answer to question 19 on the judiciary provided by his delegation and stressed that the independence of the Judicial Service Commission was guaranteed in the Constitution. Much of question 20 on judicial corruption had been dealt with in earlier oral responses; he noted that the income and assets disclosure requirements imposed by the Public Officer Ethics Act and the activities of the Kenya Anti-Corruption Commission had proved to be effective anti-corruption tools. Earlier oral responses had covered legal aid, raised in question 21, and the written response to question 22 had dealt fully with the relationship between the secular and Muslim courts. He assured members of the Committee, in connection with question 23 on the treatment of residents of informal settlements, particularly around Nairobi, that there had been no evictions and that the relevant government ministries were studying solutions to the problem of such settlements in consultation with Habitat. The issues raised in question 24 regarding alleged manipulation of broadcast permits to the detriment of political opposition had been a problem under the previous Administration but the current Government had adopted a policy of granting such permits without any regard to political tendencies.

37. Concerning the question as on the requirement that publishers should purchase a bond before printing a publication, he pointed out that the cost of such a bond was not high and that the purpose of the measure, which did not apply to existing publications, was to put some order into the publishing industry and not to muzzle the press. Publishers were similarly required to have official business premises in the event of their being sued for libel, for instance. Referring to question 26, he emphasized that many of the restrictions previously in place regarding articles 21 and 22 of the Covenant had been lifted when the law had been amended in December 1992 for example, a licence was no longer required to hold a meeting, in the case of social gatherings. It was necessary, however, for political meetings to be notified in advance to law enforcement officers and entered into an official register, essentially for practical reasons. Such political meetings did not include gatherings taking place through the action of members of parliament.

38. With regard to question 27 on child labour, the Ministry of Labour and trade unions, with the assistance of the International Labour Organization, were currently addressing that issue on which, moreover, the Kenyan Commission on Human Rights was sensitizing the population. What was defined as child labour was not always child labour in the strict sense.

39. Responding to concerns raised about the minimum age of marriage, he specified that it was 18 years but that cases of marriage at the age of 16 did occur because of the influence of religion or customs. When such cases were reported to the Government, it took suitable action, in particular by putting the girls back into school.

40. On the question of awareness-raising regarding the provisions of the Convention, he said that action had been taken, albeit not as much as he would have liked, aimed in particular at judges and law enforcement officers. The Kenya Human Rights Commission was the chief agent responsible for popularizing the Convention and monitoring compliance with the obligations deriving from it.

41. **Mr. Shearer** asked for further information about the structure of the judiciary and the qualifications of judges, particularly in the subordinate courts, which had been invested with wide-ranging jurisdiction in order to lessen the pressure on the higher courts. Were magistrates in such courts legally qualified? Did they receive prior training or had they served as practising lawyers? He would appreciate it if the Government could provide, in due course, full details of any such training programme. He also wondered what happened in the case of appeals.

42. Referring to question 21 on the list of issues (availability of legal aid), he noted that there was a gap between the State's obligations under article 15, paragraph 3 (d), of the Convention and the Government's action in that regard. While understanding the limited possibilities of developing countries, he took the view that more needed to be done. Noting the proposed measures for the extension of the legal aid system, he suggested that assistance should be sought from unofficial bodies and looked forward to a fuller report.

43. **Mr. Glele Ahanhanzo** said he wished to know more about the "Kadhis courts", particularly their number and their links with other courts. He wondered what happened in the case of a conflict between a Muslim and a non-Muslim and how equality before the law was ensured. Had any agency been given responsibility for harmonizing the law in Kenya?

44. On the matter of forcible evictions and the demolition of housing, he wished to be informed in writing of measures taken by the Government to safeguard the right to housing, particularly a training programme aimed at police officers and other officials concerned.

45. **Mr. Castillero Hoyos** asked for details of the work of the interministerial commission set up to address the matter of forced evictions. He enquired whether its findings were to be made public and if the communities affected had been consulted. He also asked what action would be taken on its recommendations, whether they were up to international standards and what would be done to ensure that evacuations took place in accordance with the law. Lastly, would evacuated persons be offered alternative accommodation, benefit from social services and be compensated for their losses?

46. **Mr. Rivas Posada**, while welcoming the measures that had been taken to expand radio and television broadcasting in the country, asked what the actual situation was regarding the granting of licences. He wondered whether the requirement that a bond should be purchased by publishers might not lead to abuses. Did it not mean, in practice, a curtailment of rights? With regard to restrictions on freedom of assembly and association, he wished to know which authorities imposed them and what recourse was available to those on whom they were imposed. On the question of child labour, he expressed great concern, referring to the very high numbers of children said to be working in the Central Province and the very large proportion of children involved in prostitution and drug trafficking. He would appreciate information on the situation country-wide, not only in terms of legislation, but also in actual practice. He was extremely concerned to learn from Kenya's report that the age of criminal responsibility in that country was eight years and wished to know why it was so low. Lastly, on women's rights, he wondered about the different kinds of marriage regime allowed and their compatibility with the Covenant's provisions to protect the dignity of women, in particular whether polygamy was legally recognized.

47. **Mr. Wieruszewski**, invoking article 26 of the Convention, supported by a considerable body of case law, wished to know whether any change in the law was being envisaged in Kenya in order to prevent discrimination on the ground of homosexuality.

48. **Mr. Solari Yrigoyen** asked whether military service was compulsory in Kenya and whether the right of conscientious objection was recognized, in accordance with article 18 of the Convention. He also wished to know whether conscientious objectors were offered the possibility of alternative forms of community service.

49. **Mr. O'Flaherty** said he shared many of the concerns already expressed, particularly with regard to discrimination against homosexuals and the treatment of children. Noting that, although banned in schools, corporal punishment was still prevalent in the country, he expressed the view that the Government should give priority to the matter. On the question of child trafficking, a cross-sectoral and multifaceted response was required, and he wished to know whether the Government had mainstreamed it as a policy concern or set up an institutional mechanism to address the issue.

The meeting rose at 12.55 p.m.